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LETTER DATED 21 JULY 1993 FROM THE PERMANENT REPRESENTATIVE OF KUWAIT TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to transmit to you herewith a letter dated 21 July 1993 from His Excellency Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, First Deputy Prime Minister and Minister for Foreign Affairs of Kuwait, in response to the letter addressed to you by the Minister for Foreign Affairs of the Iraqi regime and circulated in document S/25905 of 8 June 1993.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Mohammad A. ABULHASAN
Permanent Representative

Annex

Letter dated 21 July 1993 from the First Deputy Prime Minister and Minister for Foreign Affairs of Kuwait addressed to the Secretary-General

The Government of Kuwait has taken note of the letter dated 6 June 1993 addressed to you by the Minister for Foreign Affairs of the Iraqi regime concerning Iraq's position on Security Council resolution 833 (1993) of 27 May 1993. Before conveying its response to that letter, Kuwait would like to state once more that it welcomes the statement made on behalf of the Security Council on 28 June 1993 in response to the letter from the Minister for Foreign Affairs of the Iraqi regime and views that statement as a collective international response that rejects Iraqi claims against the sovereignty and independence of Kuwait and any encroachment on its territorial integrity and on the right of its people to express its will and determination to preserve its existence and its distinctive personality.

Kuwait further reaffirms that it welcomes the emphasis placed by the Council on the importance of the demarcation of the boundaries for building regional security and peace, on the linkage between that process and international peace and security and on the contribution of the boundary demarcation to ensuring stability and calm in the region. Since independence, Kuwait has suffered from Iraq's attempts at blackmail, expansion and hegemony and at securing a privileged position in the region to the detriment of the rights of others. The Iraqi regime has used the threat of force to make such gains and has followed a method of systematic encroachment in order to violate Kuwaiti territory in disregard of Kuwait's sovereignty and without consideration for the sentiments of its people with a view to attaining a new geopolitical situation in which new resources become available to the Iraqi economy that will enable it to exercise dominance and fulfil its dreams of expansion and of building the Iraqi model of affluence. This is set out in a book by the Iraqi President's press secretary, as follows:

> "Iraq has pursued a policy of seeking to enjoy a secure strategic position at any phase of confrontation with Iran. A durable peace is only attained by the creation of a wide outlet to the sea that will bar the way to encirclement and attempts to detach southern Iraq and obstruct the Iraqi waterway through which Iraq's oil is exported." (Harb Talid Ukhra ("One War Begets Another"), p. 30)

The Iraqi regime has pursued this policy with a meticulousness and consistency that confirm the dimensions of Iraqi strategic objectives, the essence of which is to annex Kuwaiti territory in the north and among the islands through diplomacy based on intimidation or by open aggression and resort to violence. This is what Kuwait had been living with since independence, and it culminated in the perfidious aggression of 2 August 1990.

In the preamble to its resolution 687 (1991) of 3 April 1991, the cease-fire resolution, the Security Council reaffirms the need for an unequivocal, documented and definitive end to Iraqi claims in Kuwait and for the demarcation of the boundaries between the two countries on the basis of the existing

agreements, documents and exchanges of letters. Iraq's compliance with and faithful implementation of these provisions are basic and vital to the cease-fire and the arrangements made subsequently. Given that Iraq agreed unconditionally and unreservedly to all the provisions of resolution 687 (1991), the cease-fire resolution, we shall discuss objectively and impartially some of those aspects addressed in the letter of the Minister for Foreign Affairs of the Iraqi regime.

I

In its letter of 7 June 1993, the Iraqi regime reaffirms the positions adopted by it in the past, and as set forth in letters of 2 April 1991 and 21 May 1992, on Security Council resolution 687 (1991), on the report of the Secretary-General on the establishment of the Iraq-Kuwait Boundary Demarcation Commission and on the Commission's decisions. As is well known, the Secretary-General refuted the aforesaid Iraqi position in his letter dated 20 April 1991 addressed to the Minister for Foreign Affairs of the Iraqi regime, and the Security Council did likewise in the statements made on its behalf by its President on 17 June 1992 and 23 June 1993.

The Iraqi regime's persistence in reiterating such positions is tantamount to proof of its intransigence, its lack of credibility, its duplicity and its failure to honour its commitments.

II

Throughout, the Iraqi letter makes a point of ignoring the fact that the Security Council reached its decision to request the Secretary-General to lend his assistance in the demarcation of the boundary between Kuwait and Iraq in accordance with its responsibility as set forth in Chapter VII, Article 39, of the Charter of the United Nations, which reads as follows:

> "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

This is to say nothing of the fact that, by its invasion and occupation of Kuwait, Iraq pre-empted any internationally acceptable means of resolving the boundary conflict it had created and it thereupon became necessary for the problem to be solved by United Nations intervention and under United Nations auspices.

III

It is appropriate to stress once more that Iraq's acceptance of resolution 687 (1991), and its acceptance also by the Iraqi National Assembly and not only by the Government of the Iraqi regime, is a definite and clear indication of agreement by the executive and legislative authorities to resolution 687 (1991)

in its entirety, including its demarcation provisions. Thus the contention that resolution 687 (1991) was imposed on Iraq and allowed it no latitude in which to exercise the freedom to adopt the appropriate position in its regard is refuted.

IV

Protest at the decisions of the Boundary Demarcation Commission and the resolutions of the Security Council and the assertion that such decisions came about as a result of an international conspiracy against Iraq amount to no more than an expedient for Iraq to evade its obligations towards the Security Council and the international community and an attempt to give currency to an anomalous viewpoint in order to serve its aggressive and expansionist schemes in the region.

V

The Iraqi letter refers to the resignation of the first Chairman of the Commission owing, so it claims, to his hesitation concerning the possibility of beginning the demarcation of boundaries in the Khawr Abd Allah. This is an interpretation of matters that is based on pure conjecture and that does violence to the truth rather than one based on documentary evidence and the facts as plainly evident from the text of the Chairman's letter on the non-renewal of his contract. There, he requests termination of his appointment as Chairman of the Commission for personal reasons connected with his governmental duties.

VI

Iraq raises particular objections to the terms of reference of the Boundary Demarcation Commission as they relate to demarcation in the Khawr Abd Allah by invoking considerations that are unsound. We should here like to make the following points:

1. To say that the Khawr Abd Allah is not correctly characterized as a territorial sea is to disregard the law of the sea in general and the legal regime of the territorial sea in particular, which has become a customary international norm codified by the 1982 Convention on the Law of the Sea and defined in Part II of the Convention, articles 2 to 7, concerning the legal regime to be applied to the territorial sea. Article 15 of the Convention lays down the basic rules for delimitation of the territorial sea between States with opposite or adjacent coasts by recognizing the median line as the basis for the delimitation of maritime boundaries failing agreement between the two States. The rule operates by agreement of the two States or in accordance with other arrangements determined by the international community, whether through its judicial organs such as the International Court of Justice or in the framework of the Security Council, which is precisely what happened in the present case under the terms of Security Council resolution 687 (1991).

2. To say that the Khawr Abd Allah area does not constitute a territorial sea is, moreover, an argument against Iraq and not in its favour. To maintain such

a position must imply that the Khawr Abd Allah is part of the internal waters of the two States, and it is not rational or logically conceivable that the process of demarcating the boundaries between two States should not involve the delimitation of their internal waters wherever they come together.

3. Kuwait and the United Nations would have welcomed the continued presence of the Iraqi representative in the Commission so that he could have continued to make his observations there instead of outside the Commission.

4. Iraq considers that, in its report of 20 July 1992 transmitted to the Security Council by the Secretary-General on 12 August 1992, the Commission requested the Council to grant it authority to demarcate the boundaries in the Khawr Abd Allah sector. In fact, the Commission was referring to its past work, including a review of the eastern section of the boundary, east of the junction of the Khawr al-Zubayr and the Khawr Adb Allah (para. 295). The report also indicates that the Commission had decided to consider the demarcation of boundaries in the Khawr Abd Allah at its sixth session (para. 297). Thus Iraq's claim that, in one way or another, the Security Council permitted the Commission to demarcate the boundary in the Khawr Abd Allah at the request of the Commission itself is untrue. In paragraph 3 of its resolution 773 (1992), the Council "Welcomes the decision of the Commission to consider the Eastern section of the boundary, which includes the offshore boundary, at its next session" and requests it only to begin "to demarcate this part of the boundary as soon as possible and thus complete its work".

5. Furthermore, as Iraq admits, the Boundary Demarcation Commission discussed the offshore area and the Khawr Abd Allah at its fifth, sixth, seventh and eighth sessions over an eight-month period. This refutes any charge of precipitousness in the Commission's work or concerning the soundness of that work or any failure to accord Iraq the opportunity to state its position or discuss the matter under consideration. It should also be recalled that the representative of Iraq attended the Commission's meetings up to its sixth session.

6. The Iraqi letter claims that the description of the boundary endorsed by the Security Council as a basis for demarcation does not include a characterization of the boundary in the Khawr Abd Allah area and that there is therefore no delimitation of boundaries that is agreed on by the parties concerned. Iraq thus chooses to forget the demarcation formula adopted by the Commission, which includes the arrangement concerning the islands forming an integral part of the existing boundaries and mentioned in the exchange of letters of 1932:

> "... and so on to the junction of the Khor Zobeir with the Khor Abdullah. The islands of Warbah, Bubiyan, Maskan (or Mashjan), Failakah, Auhah, Kubbar, Qaru and Umm-el-Maradim appertain to Koweit".

The 1963 agreement confirmed the boundary description as it was, so that if this formula did not constitute a description of the boundaries in the Khawr Abd Allah area that authorized the Commission to demarcate them, what then was the formula of the boundary description?

7. Furthermore, the claim made in the Iraqi letter that the Khawr Abd Allah area is not formed of the territorial waters of the two States is not only contrary to reality and the true state of affairs but contrary to the position adopted by Iraq in the past, as is shown in the Coucheron-Aamot report, drawn up at the request of the Iraqi Government in 1959, where it states that Iraqi territorial waters extend to the median line.

8. In its letter, the Iraqi regime once again contradicts itself with the claim that there are "special circumstances" in the Khawr Abd Allah area. When it asserts, on the basis of the 1982 United Nations Convention on the Law of the Sea, that the existence of such special cases justifies the demarcation of boundaries that depart from the median line, Iraq admits that the waters in question are territorial waters, given that the Convention only makes deliberate reference to special circumstances in its article 15 and that article concerns the delimitation of the territorial sea between States with opposite or adjacent coasts. Moreover, Iraq does not in any way identify the special circumstances that can be mentioned in this connection but merely asserts that it has "historic rights" in the Khawr Abd Allah without producing any evidence to that effect and says only that Kuwait does not "carry on substantial navigation" in these waters. Acceptance of such a statement would make international maritime law subject to fluctuation and extinction in this field. Is it reasonable to accept and acknowledge the "historic rights" of a State in an offshore area on the grounds that it uses the area more than others? If we are to rely on history, and we also seek support there, then the Khawr Abd Allah was named for Sheikh Abd Allah ibn Sabah, third Amir of Kuwait.

9. Furthermore, the interpretation given in the Iraqi letter that the Khawr Abd Allah is one of the cases of special circumstances provided for in article 15 of the Convention on the Law of the Sea has no basis in the facts of the situation or in the logic of law. Invocation of special circumstances can only take place where adoption of the median-line rule would lead to the separation of part of the territory of a State from its territorial sea, and this would be plainly obvious.

VII

The contention made in the Iraqi letter that the demarcation of the boundary in the Khawr Abd Allah area as decided by the Demarcation Commission may pose a threat to Iraq's right of access to the sea in exercise of its right to safe and unrestricted navigation and may in future place it in the position of a land-locked country overlooks the following facts:

1. In paragraph 97 of its final report and at numerous other points, the Boundary Demarcation Commission guarantees the right to safe and unrestricted navigation in the offshore area for both Kuwait and Iraq:

> "... navigational access is possible for both States through the Khowr Zhobeir, the Khowr Shetana and the Khowr Abd Allah to and from all their own respective waters and territories bordering their boundary. ... this right of navigation and access is provided for under the rules of international law as embcdied in the 1982 United Nations Convention on the Law of the Sea ratified by both Iraq and Kuwait. ... it is also the view

of the Commission that the right of access implies a non-suspendible right of navigation for both States."

2. In paragraph 5 of its resolution 833 (1993), the Security Council:

"Demands that Iraq and Kuwait in accordance with international law and relevant Security Council resolutions respect the inviolability of the international boundary, as demarcated by the Commission, and the right to navigational access."

3. Kuwait will be bound by the decisions of the Boundary Demarcation Commission and the resolutions of the Security Council, as affirmed in the statement of the Kuwaiti Council of Ministers transmitted by the letter dated 16 June 1993 from our Permanent Representative addressed to the Secretary-General:

"[The Council] has demanded that Iraq and Kuwait, in accordance with international law and relevant Security Council resolutions, respect the inviolability of the international boundary, as demarcated by the Commission, and the right to navigational access."

4. Kuwait, like Iraq and like any other State, is not responsible for the boundary situation of any other State, for the coastline that it does or does not have, for the resources that it enjoys or lacks, or for its climate. These are factors that have been decided by history, geography and politics.

5. Iraq has a coastal strip that opens on the Gulf and extends for more than 69 kilometres along the northern shore of the Khawr Abd Allah. This is in addition to the Shatt al-Arab and to the Khawr al-Zubayr in its entirety. Iraq has a number of ports, the most important of which are the commercial ports at Umm Qasr and Basra on the Shatt al-Arab and Mina' al-Bakr on the Gulf itself where the largest oil-tankers can be loaded.

6. Furthermore, the Iraqi regime is always boasting through its information media of the speed with which it completes the construction of its wharves and harbours and the speed with which they are ready for operation and to receive vessels, so that it does not make sense that such ports should have been built on dry land and by a State that has no outlet to the sea or no coastline.

VIII

The claim made in the Iraqi letter that the decisions adopted by the Commission represent a purely political determination imposed on Iraq without regard for its interests is contradicted by the conduct of the representative of the Iraqi regime in the Boundary Commission itself and by the following facts:

1. The representative of the Iraqi regime was in agreement with the Commission at its first meeting that the Commission's work was purely technical and that the political aspect had been addressed by the Security Council.

2. He participated in the formulation of the rules of procedure of the Boundary Demarcation Commission, which stipulated that decisions would be taken

by majority and that a quorum would include at least one State representative (rule 3).

3. He participated in the field visits to the border area.

4. The Commission's experts visited both Kuwait and Iraq, met with specialist technicians and requested both countries to submit whatever documentation, evidence and maps they had to support and document their claims. Kuwait submitted all the documents in its possession, including Iraqi documents, while the Iraqi regime did not submit one single document despite constant promises to the independent experts that it would do so.

5. The representative of the Iraqi regime participated prominently in the meetings of the Demarcation Commission until the adoption of the decisions relating to the demarcation of the land boundaries, which occupied six sessions over a period of approximately one and a half years. Subsequently, by his own free and unilateral desire, he decided to discontinue his participation in the work of the Commission despite the repeated urging of the Chairman and members of the Commission that he should take part.

6. One of the decisions of the Demarcation Commission, that relating to the Khawr al-Zubayr and placing it entirely under Iraqi sovereignty, had the effect of denying Kuwait's right to it. Kuwait voted against it, but the decision was adopted by majority and Kuwait was therefore bound by it.

7. Moreover, that the views of members of the Commission should differ in discussing a particular topic is to be expected and is self-evident, legitimate and logical, and it does not negate the authority of decisions adopted in accordance with the majority principle.

8. The Iraqi letter itself states in its section IV, paragraphs 2 and 3, that the Commission gave adequate scope to Kuwait and Iraq for discussion and review of the offshore area and for the expression of their views thereon.

Finally, the true inspiration of the letter underlying its reiteration of such claims is not concern for an outlet to the sea but a spirit of expansionism and hegemony. The essence and substance of this latest Iraqi letter should be sufficient cause for the Security Council to conclude from it that Iraq is in breach of the first legal obligation presented by resolution 687 (1991), in paragraph 2 of which the Council:

> "Demands that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the 'Agreed Minutes between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters', signed by them in the exercise of their sovereignty at Baghdad on 4 October 1963 and registered with the United Nations and published by the United Nations in document 7063, United Nations, Treaty Series, 1964".

Given its responsibility for guaranteeing the inviolability of the boundaries in question and the fact that it has the function of taking all necessary measures as required in order to achieve this goal in accordance with the Charter of the United Nations, the Security Council proceeded to adopt the

statement made by its President on 22 June 1992. Iraq cannot yet request the Security Council to mitigate the sanctions imposed as long as it does not comply first and foremost with the requirement to respect the sovereignty and independence of Kuwait and the inviolability of the boundaries demarcated by the Boundary Demarcation Commission and with regard to which Security Council resolution 833 (1993) was adopted.

(Signed) Sabah Al-Ahmad Al-Jaber AL-SABAH
First Deputy Prime Minister
and Minister for Foreign Affairs